

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**DESERT ROCK ENERGY COMPANY,
LLC AND THE DINÉ POWER
AUTHORITY,**

Plaintiffs

vs.

**U.S. ENVIRONMENTAL PROTECTION
AGENCY AND STEPHEN L. JOHNSON,
ADMINISTRATOR, U.S.
ENVIRONMENTAL PROTECTION
AGENCY,**

Defendants

CIVIL ACTION NO. 4:08-CV-872

ORDER OF DISMISSAL

Upon consideration of the Stipulation of Dismissal filed by the Parties and the papers on file in the above-captioned cause, the Court is of the opinion that this action should be DISMISSED.

It is, therefore, ORDERED that Plaintiffs' claims with respect to the issuance by EPA Region 9 of a final permit decision, within the meaning of 40 C.F.R. § 124.15(a), on the permit application submitted to EPA by Desert Rock Energy Company, LLC in February 2004 under the Clean Air Act's, 42 U.S.C. § 7401, *et seq.*, Prevention of Significant Deterioration program are hereby DISMISSED with prejudice; it is further

ORDERED that the dismissal of Plaintiffs' claims in the preceding paragraph does not limit either Plaintiffs' right to petition the EPA Environmental Appeals Board to review the final permit decision under 40 C.F.R. § 124.19 or Plaintiffs' right to seek judicial review of any final agency action, within the meaning of 40 C.F.R. § 124.19, under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1); and it is further

ORDERED that this dismissal does not include Plaintiffs' claims for costs of litigation,

including attorneys' fees, under 42 U.S.C. § 7604(d), and that this Court shall retain jurisdiction for the sole purpose of resolving any such claims.

SIGNED this ¹²13 day of August, 2008.



HON. MELINDA HARMON